

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6935

BILL NUMBER: HB 1211

NOTE PREPARED: Apr 21, 2011

BILL AMENDED: Apr 20, 2011

SUBJECT: Restricted Access to Criminal Records.

FIRST AUTHOR: Rep. Turner

FIRST SPONSOR: Sen. Steele

BILL STATUS: As Passed Senate

FUNDS AFFECTED: ☒ **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

- A. *Persons Charged with a Crime* – It provides that a person charged with a crime may petition a court to restrict disclosure of arrest records related to the arrest if the person: (1) is not prosecuted or if charges against the person are dismissed; (2) is acquitted of all criminal charges; or (3) is convicted of the crime and the conviction is subsequently vacated.
- B. *Persons Released from Prison* – It also provides that eight years after the date a person who was convicted of a misdemeanor or a Class D felony that did not result in injury to a person completes a sentence and satisfies any other obligations imposed on the person as a part of the sentence, the person may petition the sentencing court to restrict access to the person's arrest and criminal records.

Effective Date: July 1, 2011.

Explanation of State Expenditures: (Revised) *Release of Limited Criminal History Records* – The Indiana State Police (ISP) maintains the criminal history data base. ISP may need additional staff and other resources depending on the requests that criminal defendants file for expungement because criminal charges filed against them have been dismissed or, after eight years, persons served their term of imprisonment and wished to petition for restriction of arrest and criminal records.

Background Information: A person may petition ISP to limit access to an individual's limited criminal history information to criminal justice agencies if more than 15 years have elapsed since the date the person was discharged from probation, imprisonment, or parole (whichever is later) for the last conviction for a crime. Exceptions include individuals who wish to volunteer services involving children under the discretion

of a social services agency or nonprofit corporation, or if the individual is being sought by the parent locator service of the Child Support Bureau in the Department of Child Services. (IC 35-38-5-5) [Note: As proposed, this provision would also require local law enforcement agencies to limit access if these persons petition the State Police and the petition is granted.]

ISP reports the number of requests to limit access to criminal history files over the past three years in the table below.

Requests to Limit Access to Limited Criminal History Files Maintained by Indiana State Police by Calendar Year			
	2008	2009	2010 (Nov. 2010)
Requests for Limiting Access of Records	79	74	80
Requests Denied	4	10	21
No Action: ISP doesn't hold record	4	8	22

No information was available about the number of criminal charges that had been vacated or findings of guilt set aside. Additionally, it is not known how many individuals would qualify for record expungement under the provisions of the legislation. Expungement would eliminate access to criminal history files to noncriminal justice agencies (i.e., companies that specialize in background checks).

Explanation of State Revenues:

Explanation of Local Expenditures: (Revised) Any new costs to the state court system will depend on how often persons who were arrested but not charged or were acquitted of crimes or had any charges dismissed and ex-offenders after eight years file these petitions and whether the judge accepts or denies the petition. If the court accepts the petition, then the court would likely hold a hearing to determine whether the individual would qualify for having records permanently sealed.

Courts could experience more petitions for restriction of disclosure of criminal records. During CY 2009, there were 59,136 criminal charges dismissed in Indiana's trial courts; the number of cases in which the defendant was acquitted of a charge is not known. If the courts order the expungement of all 59,000 criminal cases, the number of judicial orders per year would be 1,137 petitions per week, or 227 each day. Defendants in criminal cases from years prior to 2009 might also petition for expungement as well.

Background Information: Under current law, an individual has no legal foundation to petition the court to expunge the records of an arrest unless no criminal charges were filed, all criminal charges were dropped, the individual had been mistaken for another person, no offense had been committed, or there was an absence of probable cause. Regulations concerning juvenile record expungement are more relaxed than petitions for adult record expungement. When filing for expungement, the request is filed under the original cause number that was assigned when the case was first filed. The Division of State Court Administration reports there would be no fees assessed as these fees would have been paid when the case was first disposed.

The Division of State Court Administration reports that the number of expungement requests are indeterminable. This information is specific to particular cases and is not reported to the Division. Petitions for the disclosure of arrest records are rarely filed, and information concerning requests are not uniformly

collected. Additionally, the Division of State Court Administration does not require courts to report how many cases have been put aside or how many convictions have been vacated.

Explanation of Local Revenues:

State Agencies Affected: Indiana State Police

Local Agencies Affected: Trial courts, Local law enforcement agencies.

Information Sources: Indiana State Police

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